IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

DATE OF DECISION: 11.1.2007

Dilbagh Singh and others

...Appellants

versus

State of Haryana

... Respondent

CORAM:- Hon'ble Mr. Justice Uma Nath Singh.
Hon'ble Mr.Justice A.N.Jindal.

Present: Mr.R.S.Cheema, Sr.Advocate with
Mr.Jasdev Singh Mehandiratta, Advocate
for the appellants.
Mrs.Ritu Punj, DAG, Haryana.
Mr.S.S.Dinarpur, Advocate
for the complainant.

UMA NATH SINGH, J.

This Crl. Appeal arises out of a judgment and order dated 18.7.1997 passed by learned Addl. Sessions Judge, Rohtak, in Sessions Case No.19 of 16.4.1994, convicting the accused-appellants under section 302 IPC, and awarding rigorous imprisonment for life with a fine of Rs. 20,000/-, while acquitting four other co-accused, namely, Ram Kumar, Dharambir, Suresh and Fakira. Further, in default of payment of fine, it has been directed that the accused shall undergo two years' RI each.

This appeal originates in a private complaint filed by Smt.Chalti Devi (respondent No.2) against seven persons under Sections 302/307/120-B/34/323/364/365/449/450/451/396 and 397 IPC. It included appellant Dilbagh Singh (a cousin of the deceased), his son Jai Bhagwan and wife Ratni, besides four other persons, namely, Ram Kumar son of Mange, Dharambir son of Fakira, Suresh son of Pyare and Fakira son of Nanda. Properties of the deceased are alleged to be the motive as the same

were to devolve upon the accused after the life time of the complainant and her husband, who were issueless. It also appears from the complaint that the complainant was litigating with the accused for the past 30 years and her suit was also decreed in her favour. She alleged that despite the decree, the accused did not hand over the possession of the property to her. She has further alleged that the accused in connivance with the Meham Police abducted her deceased husband on 25.11.1991 and kept him illegally confined throughout. They having forced entry into the house of the complainant, gave her beatings, snatched away all her house hold articles and turned her out of the village. She lodged complaint with all the concerned authorities to protect and free her ailing husband from the clutches of the accused and to save the property but she did not get any response. She has further alleged that she had to file a criminal complaint in the Court, which was dismissed for non prosecution since she was not allowed by the accused to appear in the Court. The accused, thereafter, filed suits in respect of the properties of the deceased and obtained a decree on 2.1.1992. In this background, the complainant alleged that she being accompanied by her brother Inder Singh and one Suraj Mal, went to Village Mohkra Khas stealthily under the cover of darkness of night to see her husband, and to look after her house. She stayed in the house of her niece, Tej Kaur wife of Karanbir, and next day morning on 18.11.1992, she went to see her house and ghair (enclosure) with Inder Singh and Suraj Mal. At about 6.00 AM, she reached near the ghair of accused Dilbagh Singh, where she heard through the windows of a room of the deceased the voice of the accused and of the deceased. The deceased was saying that, "do not kill me. You have taken all my property. My wife has been left to be beggar. Such

milk be not served as smell of pesticide for preservation of wheat is emanating from it. I shall die (emphasis supplied).” The light of the room was on and the accused had over-powered the deceased. Accused Dilbagh Singh had caught hold of his right arm and accused Ram Kumar, the left. Dharambir was sitting towards the head side and was pressing the head of the deceased with both his hands while placing it on his thigh. Accused Fakira caught hold of both the legs of the deceased, whereas accused Jai Bhagwan had caught hold of both the cheeks with both his hands. He made the deceased open his mouth after pressing the cheeks with force. Accused Ratni was holding a liquor nip in which some white coloured substance like milk was filled. On opening the mouth of the deceased, accused Ratni inserted the nip forcibly and the milk like substance mixed with medicine (poison) had been poured into his throat. Accused Fakira was standing beside and was helping accused Suresh. After having been fed by the accused, the deceased started crying saying “they have made me die, my entire body is burning from inside. I am dying, let me drink water. I be throttled. I should not be allowed to suffer any more and take my life.” The complainant led preliminary evidence and the case was finally committed to the Court of Sessions for trial. Learned Additional Sessions Judge framed the charges under Sections 164/149 and 302/149 IPC against the accused persons. The prosecution examined three witnesses. Dr.Narinder Singh (PW1) is the Autopsy Surgeon, who conducted the postmortem. In his report, he opined the cause of death to be suspected poisoning. He proved carbon copy of the postmortem (Ex.PA). As per report, it appears that he also prepared a parcel of viscera of the deceased to be sent to the FSL, Madhuban, for examination but the details of its whereabouts thereafter are

not clear from the proceedings so also the evidence on record. The complainant was examined as PW2 and she proved the complaint exhibited as PB. Inder Singh, brother of the complainant, was examined as PW3. They have claimed to be the eye witnesses of the incident. Sujraj Mal , who also accompanied them, was to be summoned as Court witness, but later on, he was given up as unnecessary. Ex.D1 (application for maintenance under Section 125 Cr.P.C. filed by the complainant against her deceased husband) was produced by the defence side. The accused appellants in their statements under Section 313 Cr.P.C. pleaded innocence and alleged false implication. According to them, deceased Dalip Singh committed suicide by consuming poison as he was frustrated because of the maintenance case filed by the complainant against him. Accused Suresh and Jai Bhagwan had not taken the deceased to the hospital for treatment and complainant Chalti Devi had not seen the actual occurrence and she filed a false complaint against them. Learned trial Judge on appreciation of evidence of the parties, passed the impugned judgment and order convicting the accused appellants, while acquitting four other co-accused.

Learned senior counsel Shri Cheema appearing for the accused appellants submitted that the motive as alleged in the complaint was too week to have led to commission of a serious offence like murder. Moreover, once the landed properties belonging to the deceased had been decreed in favour of the accused, they had no reason to commit the offence. According to him, in her cross-examinations, which the trial Court has recorded in the questions-answers form, the complainant has displayed her unnatural conduct and has rather taken contradictory stands. Learned senior counsel contended that it does not appear to be natural that after having

stayed for eleven months away from her husband and having filed application for maintenance, the complainant would have returned only on the date of occurrence. According to the complainant, she had made hue and cry and co-villagers having been attracted had gathered on the scene of occurrence but no one has been examined on behalf of the prosecution. The complainant appears to be a meticulous lady, as is evident from the fact that she filed 23 documents in preliminary evidence with her complaint, but she did not retain a copy of the complaint, alleged to have filed with the police and other higher authorities to rescue her ailing husband from the clutches of the accused. On the other hand, the accused side filed a DDR (Ex.D3) after the deceased consumed poison stating that he has committed suicide by consuming a poisonous substance like celphos tablets. Learned senior counsel further submitted that on the same set of evidence, four accused persons were acquitted, whereas the present appellants have been convicted. During trial, learned trial Judge has given a complete go-bye to the procedural law in holding the trial and has placed reliance on such materials, which were not exhibited, nor put to the accused during trial. Learned senior counsel also referred to a research paper on the use of celphos called `Forensic Journal', to submit that use of such tablets in homicidal cases is rare. In fact, in 70% suicide cases, male members consume such tablets and only in 30%, it is used by the females.

On the other hand, learned State counsel supported the impugned judgment submitting that there was a strong motive for commission of alleged offence. The couple was issueless and they had a lot of movable and immovable properties, which would have devolved after their death only on the appellants. Learned counsel further submitted that

the incident has taken place soon after the properties were transferred in the name of the accused.

We have carefully considered the rival submissions and have minutely analysed the evidence on record. In this complaint case, only three witnesses were examined, namely, Dr. Narinder Singh (PW1), the Autopsy Surgeon, Chalti Devi (PW2), the complainant, and her brother, Inder Singh (PW3). The Doctor did not give a definite opinion as regards the cause of death of the deceased. It appears from the postmortem report that he prepared a viscera of the dead body of the deceased to be sent to FSL, Madhuban, but the details of its whereabouts are not clear from the records, so also from his ocular evidence. During his statement in the Court, nothing was put across to find out the status of the viscera report, so also a definite opinion as regards the cause of death. Just after an scanty cross-examination, he was discharged from the Court. Thus, the allegation that the deceased was done to death by administering poisonous substance by the accused does not appear to be founded on the medical evidence. Chalti Devi (PW2) in her Court evidence appears to display unnatural conduct. Her evidence was recorded in questions-answers form. In some of her answers, she appeared to have taken contradictory stand, causing a doubt about her presence on the scene of occurrence. For the same reason, presence of her brother, Inder Singh (PW3), also becomes doubtful. This Court cannot ignore the fact that she is an interested witness. In her answer to query No.2, she has admitted that she had adopted one Bhagat, son of her brother Inder Singh (PW3). As per question No.4, it appears that after certain queries during her cross-examination, she started leaving the Court room and, therefore, the Public Prosecutor was told by the Court to make

her clear that if she did not give straight answers to the questions put to her, the Court would draw presumption that she was not disclosing complete facts. In answer to question No.19, she has admitted to have been staying with her brother in her native Village Kaloi, after having left her matrimonial home. In answer to question No.20, it appears that during a period of almost eleven months, she did not meet her husband. Again in answer to query No.21, she has stated that she did not enter her husband's Village Mokhra out of fear and threat from the accused, but as per complaint, all of sudden, she stealthily appeared in that village to find out the health status of her husband and to look after the property, just a day in the evening before the date of incident. The complainant has admitted in answer to query No.26 that she had not given any application under Sections 107/151 Cr.P.C. against accused Dilbagh Singh and Jai Bhagwan, on 25.11.1992, to the police, whereas she claimed in her complaint in this case that before filing this application, she had filed a complaint against the accused, which had been dismissed for non-prosecution, as the accused had not allowed her to attend the Court proceedings. In answer to query No.27, she has stated that though she had given application to the police but she did not retain a copy thereof, although she has been very meticulous in producing 23 documents in support of her complaint during adducement of preliminary evidence. Thus, it seems that the complainant was not present on the scene of occurrence at the time of alleged incident, as contended in the complaint. Rather, it appears to be a case of after thought just to involve the accused appellants in a serious offence. Similarly, during her husband being carried to the Medical College and Hospital, Rohtak, she did not accompany him, nor is her presence proved from any documentary or other

evidence. Thus, her presence on the scene of occurrence stands belied by an adverse inference on that count also, although, she has tried to improve by giving a simple answer that she was depressed. Inder Singh (PW3) is also an interested witness, as the complainant (PW2) has admitted that she had adopted his son Bhagat. He has just repeated the version given in the complaint and by the complainant (PW2) in the Court, in his examination-in-chief. However, in his cross-examination, he has admitted that he had never gone to any police station in connection with his sister's case, who appears to be wholly dependent upon him, particularly in the background of repeated threats being given to her by the accused. Thus, the assertion of the complainant (PW2) that she made complaints to the police and also to other higher authorities is also appeared to be untrue. In answer to his further cross-examination, he has stated that on hue and cry raised by them at the time of incident, some villagers had gathered, but he could not give their names, although the complainant, his sister, was married in that village. He has further stated that he did not know the name of the Doctor or the room number, wherein the deceased remained admitted during his treatment after he was administered poison. He has stated that the deceased was conscious during his lodgment in the hospital but he was unconscious while being carried to the hospital. On the contrary, it has come in evidence that the deceased died only after twenty hours of consumption of the poisonous substance. Allegedly, the incident of forcing poisonous substance into his mouth occurred at 6.00 AM in the morning and while he was admitted in the hospital at 1.30 PM. In the case history recorded by the Doctor, he has been shown conscious and irritable. On his own admission, this witness stayed in the hospital for about one hour during the admission of the

deceased. Further as per his admission, the deceased remained alive and was talking but he did not take any step to inform the police by telling his version of the incident or requesting the Doctor to record the statement of the deceased or to get it recorded by the nearest Judicial or Executive Magistrate. Thus, both the aforesaid witnesses claiming to be the eye witnesses cannot be placed reliance when they appeared to be fully interested in the properties of the deceased. That apart, from the evidence of the Doctor, it also appears that there was absence of external marks of struggle, injury or ligature on the dead body of the deceased, and, therefore, the theory of forcibly administering poisonous substance into the mouth of the deceased by the accused persons also appears to be unbelievable. Further, had any poisonous substance been administered forcibly into the mouth of the deceased, as alleged by the complainant, he would have struggled and received such marks on his body. Furthermore, the Doctor has clarified in his cross-examination that the alleged poisonous substance, being celphos tablet, on being mixed with milk or water, would become dilute in its power, which is also clear from the fact that the deceased survived for twenty hours after consumption of the poisonous substance. Conduct of the complainant and her brother, Inder Singh (PW3), if present on the spot, as claimed by them, appears to be wholly unnatural. A copy of the inquest report is found to be present on the record of the case but it has not been exhibited, nor an FIR was registered, nor copy thereof was sent to the Illaqa Magistrate under Section 157 Cr.P.C. to give a clear picture about the case. The inquest becomes relevant because it gives the apparent cause of death. In the instant case, consumption of poisonous substance to commit suicide has been shown to be the cause of death. Moreover, a copy

of application filed by the complainant under Section 125 Cr.P.C. against her husband for maintenance during her stay away from him since 25.11.1991 has also been placed on record by way of Ex.D1 by the accused. It clearly indicates that there was no emotional attachment between the couple. Had there been any emotional attachment between them and had the accused abducted her husband, she would not have filed an application for maintenance under Section 125 Cr.P.C., and rather, she would have moved the Magistrate or the High Court for production of her husband from illegal detention. The complainant appears to be conscious of her right and she was not an absolutely rustic lady. Thus, the contents of the complaint appear to be unfounded and the conduct of the prosecution witnesses is absolutely unnatural. On the other hand, the accused side filed a DDR soon after the deceased had consumed the poisonous substance. They were not scared of the police because they appear to be clear in their conscience. Thus, the accused had no motive to commit murder of the deceased after his properties had been transferred in their names by way of decree (Ex.D2) in their suit. He was around 75-80 years of age at the time of transfer of the properties, and they could look after him a little more than to involve themselves in a serious offence like murder. It also does not stand to reason that on the same set of evidence, four accused were acquitted and three have been convicted. Learned trial Court rather appears to have fallen in error so much so that without a valid reason, the same evidence has been used for the purpose of conviction of the appellants.

For the aforesaid reasons, we find considerable force in the submissions of learned senior counsel that the trial Court has completely ignored the procedure prescribed for conduction of a criminal trial and vide

its judgment, in para 21, it has placed reliance on seven unconnected documents after summoning them behind the back of the accused to prove a motive on their part. The said documents were not put to the accused during their examinations under Section 313 Cr.P.C.

In the premises, discussed hereinabove, we are in agreement with the submissions of learned senior counsel for the appellants. Hence, the appeal is allowed and the impugned judgment is set aside. The bail bonds of the accused appellants, who are said to be on bail, shall stand discharged.

(UMA NATH SINGH)
JUDGE

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(A.N.JINDAL)
JUDGE